

Comment Set 14



North American Engineering

July 23, 2003

Ms. Judy Brown
Public Land Management Specialist
State Lands Commission
Division of Land Management
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: SFPP Concord to Sacramento Pipeline Project

Dear Ms. Brown,

This letter provides written comments on the Draft Environmental Impact Report (EIR), prepared by Aspen Environmental, for the SFPP Concord to Sacramento Project (the SFPP Project), dated July 2003. These comments expand upon and supplement the Rhodia Inc. (Rhodia) comments provided at the Public Hearing on the SFPP Project on July 16, 2003 in Fairfield, California. For the convenience of the California State Lands Commission (CSLC), we have also reproduced in this letter the general comments read into the public record at the July 16, 2003 Public Hearing.

Rhodia is compelled to raise EIR-related issues on the SFPP Project for two reasons. First, Rhodia has been planning the Peyton Slough Remediation and Restoration Project for several years, pursuant to an Order issued by the Regional Water Quality Control Board (RWQCB) and in concert with multiple state and federal agencies and interested parties. Rhodia has significant legal obligations and responsibilities with regard to the project and its long-term success. In light of this, it would be irresponsible as a corporation for Rhodia to forego careful examination of the SFPP Project during this comment period.

Second, the project as described in the Draft EIR appears to present impacts that will adversely affect the areas subject to Rhodia's remediation and restoration project and are not adequately addressed in this CEQA document. Such impacts are required by law to be studied and addressed in the CEQA process. In our view, the Draft EIR does not comply with CEQA in this regard.

Rhodia does not oppose the SFPP Project as a whole. We do believe that the segment of the project impacting Rhodia's remediation and restoration project area needs to undergo additional study and analysis. Our concerns stem from the potential for a limited segment of the SFPP Project to work at cross purposes with Rhodia's remediation and long-term restoration obligations.

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Rhodia has been responsive to SFPP's requests for information about the Peyton Slough Remediation and Restoration Project, and will remain open and cooperative in providing such information to SFPP, the agencies and interested parties. We believe that learning more about the proposed project and its impacts will lead to forward progress for both Rhodia and for SFPP.

The following is a list of documents that describe the Peyton Slough Remediation and Restoration Project, all of which were submitted to CSLC, the lead agency for the SFPP Project, in 2002:

- Pre-Dredging Site Investigation, URS, December 2000
- Feasibility Study, URS, March 2001
- Addendum to the Feasibility Study, URS, January 2002
- Human Health and Ecological Tiered Risk Assessment, URS, February 2002
- RWQCB Order No. 01-094
- Biological Assessment, URS, March 2002
- Cultural Resources Technical Report, URS, March 2002
- Remedial Design Report, URS, March 2002 (submitted in March 2002)
- CEQA Initial Study, URS, March and October 2002

In addition, Rhodia provided the Soil Management Plan (URS 2003) and Habitat Mitigation and Monitoring Plan (HMMP) (URS 2003) to CSLC in February and May of 2003. Rhodia has also made this information available to SFPP.

The following provides the general comments to the Draft EIR, and then the specific comments by Section (Executive Summary, Section B, etc.).

GENERAL COMMENTS

The following statement was read by Rhodia representative Mary Brown at the July 16, 2003 Public Hearing on the SFPP Concord to Sacramento Pipeline Project:

"Good evening ladies and gentlemen. My name is Mary Brown from Rhodia, Inc., and I have a brief statement to read for the record. For those of you who do not know Rhodia, we are an industrial property owner with a facility on the southern shore of the Carquinez Strait, which is located in Segment 1.

On February 20, 2002, at the Public Scoping Meeting for this EIR, Rhodia specifically requested that this EIR address the cumulative impacts of this pipeline project on Rhodia's remediation and the wetlands affected by that remediation in

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the vicinity of the currently proposed pipeline alignment, and any alternative alignment in the vicinity.

At the same meeting, Rhodia requested that the EIR's analysis of impacts upon Rhodia's project and the wetlands include a consideration of alternate alignments that avoid the wetlands altogether.

As the Commission is aware, Rhodia has been planning its environmental remediation and wetlands restoration project for over three years. During this time Rhodia, in conjunction with 15 government agencies and interested parties, has been planning a project that will clean up and manage historical contamination, and restore and enhance important surrounding wetlands habitat and natural resources.

The current Draft EIR for the SFPP pipeline project does not provide any analysis of the impacts that the pipeline will have on Rhodia's remediation and restoration in the same vicinity. While the Draft EIR acknowledges the obvious - that running the pipeline in the vicinity of the remediation and restoration project would require coordination with Rhodia - the Draft EIR provides no information concerning short term impacts on Rhodia's remediation or long term impacts on Rhodia's wetlands and habitat restoration.

We recognize the need for coordination of the planning, scheduling, implementation, and monitoring of any pipeline that may be approved in the vicinity of remediation and restoration activities. To date, however, we have had no meaningful discussions regarding such coordination. There is a reason for this. SFPP has not provided Rhodia with any information that would allow a consideration of the impacts of the proposed pipeline on the remediation and restoration or on how coordinated activities could address such impacts. The Draft EIR provides Rhodia with the first opportunity to understand the implications of the Proposed Project, its alternatives, and its phases. However, the Draft EIR raises questions rather than providing analysis of impacts. It is simply not enough under CEQA for the EIR to defer appropriate analysis of impacts by saying that Rhodia and SFPP will "coordinate" in the future. An appropriate analysis must occur in the EIR and should include the specific impacts that the pipeline project will have on restoration and the wetlands and a presentation of how

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coordination among Rhodia, SFPP and the multiple resource agencies will address those impacts.

Significant public interests are at stake here. Rhodia's restoration project has been ordered by the San Francisco Regional Water Quality Control Board, and has been studied and approved under CEQA and has been authorized by the relevant state and federal resource agencies, including this Commission. Impairment of these public interests could be prevented by avoiding proximity to the wetlands and sensitive State Lands resources. For example, SFPP has available to it an existing pipeline corridor all the way to the Carquinez bridge crossing. Using this existing pipeline corridor would avoid substantial impacts to the remediation and restoration, and would result in the preservation of substantial public environmental resources. In the Draft EIR, however, such an alternative is not addressed at all, not even in the discussion of the Existing Railroad Right of Way alternative.

Our final comment for this hearing pertains to the portion of the pipeline project referred to as "Phase 2" in the Draft EIR. While we appreciate that references to Phase 2 give us a fuller understanding of the project and SFPP's intentions with regard to the wetlands over time, there is no evidence that the public interest is served by deferring the analysis of the impacts of Phase 2. By segmenting the CEQA analysis for Phase II into a separate EIR, but memorializing it in this EIR, the Commission appears to be presupposing the acceptance of the Phase 2 alignment and project at this stage; effectively adopting Phase 2 before an appropriate CEQA analysis has been performed. If Phase 2 is truly a separate project, there appears to be no reason for running the Phase 1 alignment so close to the wetlands and sensitive State Lands resources. Even with respect to Phase 1, it does not appear that such proximity is necessary, especially when the project proponent has an existing right of way available, and perhaps other alternatives, that would avoid impacts to the wetlands."

To further clarify this point, we understand that CEQA projects consisting of phases should not be broken into multiple projects and subject to separate EIRs. "*When a specific project contemplates future expansion, the lead agency is required to review all phases of the project before it is undertaken.*" *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396, 253. It would appear that

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the Proposed Project is routed through and adjacent to the Peyton Slough Remediation and Restoration Site so that the Phase 1 pipeline will be proximate to the planned Phase 2 project site. In the absence of Phase 2, there appears to be no compelling reason to route the Phase 1 through these locations.

14-1

SPECIFIC COMMENTS

COMMENTS ON EXECUTIVE SUMMARY

Comment ES-1. Page ES-5. General Pipeline Route Description. First paragraph. Line 3 and second paragraph.

14-2

The sentence reads, "... northwest through industrial areas of the county and City of Martinez."

The second paragraph under this subsection describes all Segments, except Segment 1, as follows:

"At the south shore of the Carquinez Strait, the proposed pipeline would connect to SFPP's existing 14-inch pipeline to cross the Carquinez Strait.¹ The pipeline route in the city of Benicia would travel northeasterly in industrial areas largely in road ROWs. The pipeline route would leave the city of Benicia between MPs 8 and 9 and travel primarily through agricultural areas of Solano County..."

There is no mention of the Peyton Marsh system in the General Pipeline Route Description. The Proposed Project in Segment 1 includes both the Phase 1 and Phase 2 alignments from approximately MP 3 to MP 5, both of which traverse the Peyton Marsh and Slough. The Peyton Marsh and Slough are currently targeted for remediation and restoration. This restoration project was deemed to have significant regional importance by the San Francisco Bay Conservation and Development Commission (BCDC), US Army Corps of Engineers (ACOE), California Fish and Game Department (CDFG), and the RWQCB. The Executive Summary of the Draft EIR does not include a description of Segment 1, where it is in proximity to Peyton Marsh and Slough, and the remediation and restoration areas.

Comment ES-2. Page ES-5. Footnote.

14-3

The footnote on this page states, "¹ Use of SFPP existing 14-inch pipeline is part of the Proposed Project and is described in the EIR as the "Phase 1 Carquinez Strait Crossing."

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"When technology for directional drilling improves sufficiently, SFPP will propose a single directional drill ("Phase 2"); this action is addressed briefly in this Draft EIR but it will be considered in a subsequent CEQA document when SFPP formally proposes the new crossing."

14-3

It appears that the Draft EIR alternatives analysis has not evaluated alternate scenarios (other than mentioning Phase 2 without elaboration) for crossing the Carquinez Strait. Given the lack of tried and true technology for achieving the Phase 2 crossing as described, the Draft EIR does not evaluate a "no extension" alternative of the new 20" pipeline along the Phase 1 route. In addition, there is no analysis of the relative benefits of alternative strait crossings, in lieu of Phase 2, that would avoid entirely the potential for impacts to US Army Corps jurisdictions (wetlands, See Comment ES-1). This is a specific objective stated in Section 1.3 of the Executive Summary.

Notwithstanding references to a separate CEQA analysis, this Draft EIR does not appear to propose alternatives for the Carquinez Strait Crossing. As mentioned above, Rhodia believes that the segmentation of the project into Phase 1 and Phase 2 may raise significant legal questions under CEQA concerning appropriate process for review of projects consisting of phases. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396, 253

Comment ES-3. Page ES-6. Alternatives Evaluated in EIR.

The Draft EIR does not appear to evaluate an alternative using the project proponent's existing pipeline right of way in Segment 1. Specifically, discussion of the "Existing ROW Alternative" described to "be nearly entirely within" the UPRR ROW, does not include an analysis of the use of the existing 14-inch pipe corridor (or a new corridor adjacent to the existing right of way) for Segment 1, – an alternative that would avoid proximity to the Peyton Slough Remediation and Restoration Project Area and the surrounding wetlands complex.

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[Please note: In several comments, this letter refers to the "existing pipeline right of way" as the actual pipeline corridor currently occupied by the project proponent's 14-inch pipeline. The existing pipeline right of way should not be confused with the Existing Pipeline ROW Alternative, which does not appear to utilize the existing pipeline right of way throughout Segment 1, and which does not appear to differ from the alignment for Proposed Project with respect to proximity to the Peyton Slough Remediation and Restoration Project Area and the adjacent wetlands complex.]

In addition, the Draft EIR does not quantify or evaluate the wetland impacts associated with the proposed alignment through Segment 1 and in the vicinity of the Rhodia property, including but not limited to access routes to work areas, truck traffic, and construction work windows.